UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

C. Pezza & Son, Inc.,
Plaintiff

v. C.A. No. 93-0664T

New England Power Service Company
and Montaup Electric Company,
Defendants

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ERNEST C. TORRES, United States District Judge.

C. Pezza & Son, Inc. ("Pezza") seeks compensation for what it claims was extra work that it was required to perform pursuant to an excavation contract between Pezza, on the one hand, and New England Power Service Co. ("NEP") and Montaup Electric Co. ("Montaup") ("the owners"). Pezza contends that the extra work was necessitated by the unanticipated instability of the dredge spoil that it excavated. Specifically, it alleges that because the dredge spoil would not support the weight of equipment necessary to do the work and could not be piled, additional time, equipment and material were required to:

a. excavate, haul and place the dredge spoil.

b. repair temporary haul roads that had to be built at the excavation site.

c. construct a series of finger roads at the placement/fill site.

Pezza's complaint contains nine counts. Counts 1 and 2 seek an equitable adjustment for changed conditions. Counts 3-6 assert claims for breach of warranty and negligent misrepresentation. Counts 7-9 seek payment of a 10% "retainage" that the contract permits the Owners to withhold until all claims are resolved. A partial summary judgment previously was granted with respect to the retainage claims. Pezza's claims for additional compensation for what it alleges was extra work may be summarized as follows:

1. Pezza performed the work in accordance with specifications provided by the owners (the "built according to specifications" claim).

2. The owners represented or warranted that the nature of the dredge spoil would permit the work to be accomplished in a manner not requiring the "extra work." (the "misrepresentation-warranty" claim).

3. Pezza is entitled to an equitable adjustment for extra costs incurred in performing the work because those extra costs are attributable to latent conditions materially different from those contemplated by the parties or latent conditions known to the

owners and not disclosed to Pezza (the "equitable adjustment" claim).

The Owners dispute both Pezza's claim for extra work and Pezza's calculations regarding the amount claimed for such work. After hearing five days of testimony and reviewing numerous exhibits, the Court now makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. On September 4, 1992, Pezza entered into a contract with the Owners.

2. The contract called for Pezza to excavate and haul dredge spoil from Montaup's South Somerset Site (the "excavation site") and place it in a cooling canal at NEP's Brayton Point Station (the "placement site").

3. The work to be performed by Pezza consisted essentially of:

   a. constructing a dike at one end of the cooling canal to contain the dredge spoil;

   b. installing a dewatering system to drain water accumulating in the cooling canal;

   c. excavating an estimated 220,000 cubic yards of dredge spoil from the excavation site, which required excavation to a depth of approximately 13 ft.

   d. constructing a permanent haul road between the sites;

   e. constructing a network of temporary haul roads at the excavation site;

   f. placing the dredge spoil in the cooling canal to a prescribed grade.

4. Prior to awarding the contract, NEP and Montaup hired GEI Consultants, Inc., a geotechnical engineering firm, to conduct preliminary evaluations of the project's feasibility.

5. In May 1990,at GEI's request, K.R. Rezendes, an excavation contractor, dug seven test pits at the excavation site.

6. GEI tested samples of the material taken from the test pits, and reported the results of these tests in a June 7, 1990 letter to NEP (the "first GEI report").

7. The first GEI report described most of the dredge spoil as "organic silt" and stated: "Most of the soil encountered in the seven test pits...would not be suitable fill for the Brayton Point cooling canal because of its high silt/clay content and high plasticity. If placed in the wet in the cooling canal, the organic silt would require a significant period of time to consolidate to a degree that would support construction traffic....During excavation of the test pits, considerable effort was required by the contractor to empty the organic silt from the bucket of the backhoe because of its high plasticity."

8. The report also stated that "Ground water levels read in the observation wells varied from .5 to 5 feet below ground surface."

9. The report made it clear that "[t]he nature and extent of variations in subsurface conditions between test pits will become evident only during attempts to excavate the material or during further explorations. If variations from the presently-known conditions are encountered,

it may be necessary to revise our recommendations."

10. In November of 1990, the Owners arranged for K.R. Rezendes to excavate and place small amounts of the dredge spoil.

11. Rezendes did a test placement of 300 yd^3 which indicated that the dredge spoil was somewhat unstable.

12. At the Owners' request, GEI performed another study and submitted a second report dated April 12, 1991 (the "second GEI report").

13. The second GEI report stated: "The purpose of this report is to present the results of laboratory chemical analysis testing of the existing dredge spoil material and to discuss optional methods for placing the excavated dredge spoil material in the cooling canal fly ash landfill."

14. The report referred to the information contained in the first GEI report and described the dredge spoil as "wet, highly plastic and contain[ing] numerous root fragments (reed tubers)."

15. The second GEI report further alluded to the results of the November 1990 test placement by Rezendes, saying: "Compaction was attempted using a self-propelled CAT CS-553 smooth wheel vibratory roller, without vibration. NEP reports great difficulty trafficking over the freshly placed dredge spoil fill. The compactor could traverse the fill after 1-foot of fly ash was placed over the fill; however, heavy rutting occurred under the roller wheels. Better success was achieved with a 3-foot cover of fly ash but shoving still occurred under the weight of the roller."

16. The report also stated that "The in situ dredge spoil material has a high natural water content and low permeability. It will not be practical to drain the material in place by ditching or other conventional means. In many areas, excavation will be below the ground water level and standing water will accumulate in the excavations. This will be aggravated by rainfall runoff. It is recommended that excavation be conducted so as to leave a network of dikes in the excavated areas to isolate daily excavation from standing water in the previous day's excavation areas. These dikes will help prevent the inclusion of excess water in the excavated material."

17. The report stated that: "...In order to excavate up to 200,000 cubic yards of material, it will be necessary for the contractor to establish a network of haul roads on the dredge spoil material. These haul roads may require geotextile or geogrid reinforcement with a minimum of one to two feet of clean sand/gravel overlay to insure adequate trafficability over the dredge spoil material."

18. In the report, GEI identified two practical options for placing the excavated dredge spoil material in the cooling canal,

    a. The base layer method, which called for placing the material in five-foot layers until the prescribed grade was reached.

    b. The confined cell method, which called for starting at one end of the canal and piling the material up to the prescribed grade and gradually working to the other end of the canal until the canal was completely filled.

19. The advantages of the "confined cell" method were identified as being: a) that the dredge

spoil material can be placed at its natural moisture content without drying, b) the material can be moved and placed rapidly without stockpiling and c) only a limited area of the cooling canal fly ash landfill would be underlain by the dredge spoil material.

20. With respect to the base layer method the report stated that the dredge spoil could be placed and compacted if its natural moisture content were altered by layering the material, working it with a rototiller, spreading it and compacting it in 8 to 10-inch lifts and covering it with coal ash landfill material.

21. Finally, the report included a caveat similar to that contained in the first GEI report: "The recommendations in this report are based in part upon the data reported from the test pits. The nature and extent of variations between test pits may not become evident until construction. If variations from the anticipated conditions are encountered, it may be necessary to revise the recommendations in this report."

22. There is no evidence that any of the soil data or test results contained in the GEI report were inaccurate or misleading.

23. In fact, subsequent events demonstrated that the dredge spoil was organic silt of high plasticity as described in the two GEI reports.

24. In January 1992, GEI developed technical specifications and bid drawings for the project.

25. Both GEI reports were incorporated by reference into the specifications that, later, were distributed to prospective bidders.

26. The specifications did not prescribe the exact methods to be used in excavating or placing the dredge spoil. Rather, they described genereal methods that might be considered and left it to the bidders to determine the best way in which to accomplish the work, subject to the Owners' approval.

27. When GEI prepared the bid documents, it specifically advised the Owners, by letter, that "The dredge spoil has a potentially low bearing pressure which will rapidly degrade under hauling vehicle traffic. A system of reinforced haul roads and platforms will be required for excavation of the existing dredge spoil material."

29. GEI never calculated the shear strength or load-bearing capacity of the dredge spoil but did conclude that the material above the ground water table could be used without being dried while the material below the water table probably would have to be dried because when wet, it had a tendency to liquefy and would not support the weight of a bulldozer.

30. On June 30, 1992, Pezza and six other contractors were invited to bid on the project. All contractors received the following bid documents:

a. Information and Instruction for Bidders;

b. Specification for Dredge Material Transfer Project (which incorporated the two GEI reports);

c. Drawings;

d. Bid form;

e. Bidder qualification form; and

f. Specimen copy of the Contract.

31. Paragraph 9 of the Information and Instruction for Bidders stated:

> "...Each bidder shall visit the Project site of the proposed Work and fully acquaint itself with the conditions as they exist, so that it may fully understand the facilities, difficulties, and restrictions attending the execution of the Work.
>
> Bidders shall also thoroughly examine and be familiar with the Drawings and the Specification. Plans, surveys, measurements, dimensions, calculations, estimates, borings, and statements as to the conditions under which the Work is to be performed are believed to be correct, but the Bidders shall examine same for itself, as no allowance shall be made for any errors or inaccuracies that may be found therein. The failure or omission of any Bidder to receive or examine any form, instrument or document; or, to visit the Project site and acquaint itself with existing conditions shall in no way relieve any Bidder from any obligations with respect to its Bid.
>
> By submitting a proposal the Bidder agrees and warrants that it has examined the Project site and the Agreement documents and that where the Specification requires a given result to be produced in any part of the Work, the Specification and Drawings are adequate and the required result can be produced."

32. Each bidder was required to submit a Construction Schedule which "shall contain a detailed breakdown of the entire scope of the Project, and shall show the order in which the Bidder intends to carry out the Work. The Construction Schedule shall include all of the Bidder's planning, permitting, engineering, design, procurement, delivery, and construction activities, including those of the Subcontractors."

33. The Contract, itself, contained several provisions dealing with the Contractor's responsibilities to familiarize itself with the work to be done and the procedures to be followed by the Contractor in seeking an equitable adjustment. These sections are as follows:

> Article 5.1: "The Contractor represents that is has fully acquainted itself with all the documents and conditions relevant to this Project, including, but not limited to: the Schedules, Exhibits, Drawings and Specifications to insure that they are sufficient to properly complete the Project; all relevant plans, surveys, measurements, dimensions, calculations, estimates and borings to be sure that they contain no errors or inaccuracies; and the nature and location of the Work, the character of Equipment and facilities needed preliminary to and during the prosecution of the Work; the general and local conditions including availability, efficiency and cost of required labor, and all other matters which can in any way affect the Project and its cost under this Agreement and that it shall notify its Subcontractors of such.
>
> Article 5.2: "Lack of knowledge of any of the foregoing matters shall not constitute an excuse for delay or failure of performance under this Agreement; nor shall it justify any

increase in the price as determined under this Agreement.

34. One of the drawings incorporated into the Contract is entitled "20017 (Sheet 3 of 6): Dredge Material Disposal Site - Schematic Excavation Plan & Procedures." It contains the following notes:

> 1. Schematic excavation plan and procedures of dredge material disposal site was developed as a guide. Contractor may submit alternate procedures to the owner for review and approval.
>
> 2. Temporary haul road(s) to be constructed with stabilizing base geosynthetic material as shown. The Contractor shall design temporary haul roads considering anticipated loads, track and/or wheel pressures, dimensions of construction equipment, and foundation characteristics using geosynthetics, such as stabilization fabric and/or geogrid enforcement, beneath compacted granular fill to support heavy excavating equipment and truck traffic.
>
> 3. The contractor should plan the overall site excavation sequence by excavating in a general direction from north to south and from east to west within the containment dike.

35. The Contract Specification stated that: "Subsurface investigation information is included herein. It is expressly understood that the Owner and Engineer will not be responsible for interpretations or conclusions drawn therefrom by the Contractor. Subsurface information is made available to the Contractor for information on factual data only and shall not be interpreted as a warranty of subsurface conditions whether interpreted from written text, subsurface exploration logs, or other data....It should be understood that ground water elevations indicated in these documents applies only at the location and time reported. Ground water elevations may vary at other locations and time of year."

36. The Specifications further provide that "Additional test borings and other exploratory operations may be made by the Contractor, with the approval of the Owner, and at no additional cost to the Owner" [Part 1.02(B)] and that submittals by the Contractor should include:

> 1. Excavation and backfill schedule, procedures, Equipment, and sequence for all Work including any processing of excavated dredge material, if required.
>
> 2. Design computations and plans for geogrid/geotextile reinforced haul road(s) at the South Somerset site.

37. Although the Owners required that the temporary haul roads be constructed with a base of geosynthetic material covered with compacted gravel, it was left to the contractor to determine:

(a) the layout of the haul roads;

(b) the type of geosynthetic material to use, and

(c) the amount of gravel necessary, which depended on the type of equipment selected by the contractor.

38. Due to the nature of the dredge spoil, the placement “options” presented in the GEI reports and the compaction requirements were the subject of discussions at several meetings between the Owners and bidders before the contract was awarded.

39. At one of these meetings, the Owners told the bidders that the Owners lacked expertise in this type of large earthmoving project and were relying on the bidders' expertise to help develop the means to complete the work.

40. Bidders expressed the opinion that compaction would be prohibitively expensive or impossible to attain due to the dredge spoil's instability which prevented it from supporting the weight of heavy equipment.

41. The bidders were instructed to submit bids that assumed that compaction was required, but to identify in their bids their concerns about the compaction requirement and that after reviewing the bids, the Owner would consider removing the compaction requirement.

42. Before bidding, Leonard Pezza dug several test holes at the excavation site because he wanted to make his own determination regarding the character of the dredge spoil.

43. He found that it supported heavy equipment and remained in place when stacked in a pile.

44. Pezza also concluded that the dredge spoil was dry, and that it would not be necessary to dry it as recommended by GEI.

45. Pezza did not rely on the soil analysis data compiled by GEI because, since he is not a soils engineer, it meant little to him.

46. Moreover, unlike at least one other bidder, Pezza did not wish to hire a soil engineer to evaluate the material.

47. After bids were submitted, the compaction requirement was eliminated based on the concerns expressed by the bidders.

48. The reasons for eliminating the compaction requirement made it clear that the base layer method previously mentioned by GEI no longer could be considered a practical option for placing the dredge spoil.

49. Pezza then reduced its bid by $66,000, which was considerably less than the reductions made by the other contractors.

50. Pezza's bid was based on its own examination of the excavation site, not on information supplied by the Owners.

51. Moreover, Pezza did not rely on the specifications. Its practice was to do the work in what it thought was the best way unless that method was contrary to the specifications.

52. The contract was awarded to Pezza on August 31, 1992.

53. Under the contract, work was to begin September 14 and end around January 22.

54. Before hauling could begin, Pezza had to build a dike separating the cooling canal from

the Lee River.

55. Pezza did not complete the dike until two weeks after the date called for by the “critical path” schedule.

56. Because of a delay in completing the dike, hauling did not begin until December 1992, a wet period when the water table is relatively high, rather than during October, a dry month when the water table is relatively low.

57. Based on the type of trucks used by Pezza, a 28" layer of gravel would have been necessary to prevent failure of the haul roads.

58. Pezza used considerably less than 28".

59. During the first few days of the project, work went pretty much as Pezza had planned.

60. By the fourth day, Pezza began experiencing problems at both the excavation site and at the placement site.

61. The excavation site filled with rainwater and trucks began having difficulty negotiating the temporary haul roads.

62. There were two reasons for that difficulty:

a. the material beneath the geotextile material (“Mirafi”) gave way in places, because the Mirafi was overlaid with too little gravel; and

b. dredge spoil spilling from the trucks mixed with the gravel making the roads very soft.

63. The temporary haul roads were also made more difficult to travel both by rain and because the work occurred during a period when the ground would freeze and then thaw.

64. Beginning on December 24, 1992, Pezza began importing gravel and additional geotextile fabric to reconstruct the temporary haul roads.

65. At the placement site, the dredge spoil became soft and unstable due to moisture. It could not be piled against the dike and it would not support the weight of equipment.

66. Consequently, dredge spoil could not be dumped directly into the canal but rather equipment had to be used to cast it into place, thereby increasing the amount of time and work required.

67. The problems were compounded by:

a. Pezza's inability to keep the canal bottom sufficiently dewatered;

b. equipment breakdowns;

c. rain, which made the dredge material in the canal more unstable.

68. Pezza's “quality assurance reports” to the Owners for the days between Jan. 15, 1993 and Feb.23, 1993 state that, on each day reported, the weather and the temperature delayed the hauling and placement operations by causing deterioration of both the haul roads at the

excavation site and the roads on the bottom of the canal at the placement site.

69. On December 29, 1992, Pezza notified NEP of the difficulties it was experiencing at the placement site but did not discuss the problems with the temporary haul roads.

70. Pezza asserted that dealing with those difficulties required a change in the work for which Pezza was entitled to additional compensation pursuant to Articles 6.0 and 18.0 of the contract.

71. The pertinent portions of these articles provide:

> Article 6.3: "If the Contractor desires a change in the Work necessary to complete the Project or believes that any order, instruction, request, clarification or interpretation of the Owner, or its representatives or compliance with any laws, orders or regulations, constitutes a substantial change in the Work, the Contractor shall submit, to the Field Representative or the Owner, prior to performance of any such Work, and within five (5) days of receipt of discovery thereof, a written claim specifying the nature of the change, any increase or decrease in the cost of performing the Work, and any resulting change in the Construction Schedule. Within thirty (30) days of receipt of said notice, the Owner shall determine whether the claim constitutes a change in the Work and if so to what extent this Agreement should be modified. The Owner shall then notify the Contractor, in writing, of its decision. Any change in the Construction Schedule shall be specified in the Owner's notice and any change in price as determined under the Agreement shall be determined in accordance with Section 6.5."
>
> Article 6.4: "The Owner may require the Contractor to proceed with Work which is the subject of a proposed change in the Work prior to the Owner's consent to any change in the price or Construction Schedule, in which event the Owner shall so notify the Contractor. The Contractor shall then proceed with the Work, submit to the Field Representative an accurate daily account of the cost and time thereof, and the Contractor and the Owner shall then negotiate in good faith with respect to said change.
>
> Article 18.1: "The Contractor shall promptly, and before such conditions are disturbed, give the Engineer and Field Representative written notice in accordance with Section 6.3 of subsurface or latent physical conditions at the Work site differing materially from those indicated in this Agreement. The Field Representative and/or Engineer shall promptly investigate the conditions, and if they find that such conditions do so materially differ and cause an increase or decrease in the cost of, or the time required for, performance of this Agreement, an equitable adjustment shall be made in accordance with Article 6.0. Any claim of the Contractor for adjustment hereunder shall not be allowed unless it has given notice as above required and before such conditions are disturbed."

72. On January 5, 1993, NEP told Pezza to continue the work and that the Owners would not be responsible for any additional costs incurred.

73. However, the Owners did agree to pay for hauling and placing additional gravel and trap rock for the permanent haul road.

74. Pezza continued the work.

75. On April 12, 1993, the parties met to discuss compensation claimed by Pezza for the additional gravel and trap rock used on the permanent haul road and for hauling and placing more dredge spoil than had been estimated.

76. As a result of that meeting the Owners agreed to pay Pezza for:

a. Hauling and placing 36,728 yd^3 more of dredge spoil than the 220,000 yd^3 that had been anticipated.

b. Hauling and placing additional gravel for the permanent haul road.

c. Trap rock for the permanent haul road.

77. At the April 12 meeting Pezza's representative also was given an opportunity to make any other claims for additional compensation but did not raise the claims that are the subject of this litigation.

78. Work on the project essentially was completed in the spring of 1993, and in July of 1993, Pezza returned to complete placement activities and final grading at the cooling canal.

CONCLUSIONS OF LAW

1. In order to prevail on the "built according to specifications" claim, Pezza is required to prove:

(a) The methods of excavation and placement were specified by the contract.

(b) Pezza followed the specified methods.

(c) The specified methods were insufficient to accomplish the work.

(d) That extra costs were incurred as a result of deficiencies in the specifications.

2. In order to prevail on the "misrepresentation-warranty" claim, Pezza is required to prove that:

(a) The owners made representations or warranties regarding material facts.

(b) Pezza relied on those representations or warranties.

(c) Pezza's reliance was reasonable.

(d) The representations or warranties were false.

(e) Extra costs were incurred as a result of the false representations or warranties.

3. In order to prevail on the "equitable adjustment" claim, Pezza must prove that:

(a) Latent conditions were encountered that were materially different from those indicated in the contract.

(b) Equity requires that the owners bear the responsibility for the latent condition.

(c) Pezza incurred additional costs as a result of the latent conditions.

4. Pezza has failed to prove one or more of the required elements with respect to each of those claims.

5. The specifications in the contract were performance specifications rather than design specifications.

6. A performance specification requires a contractor to produce a specific result but does not specify the particular method of achieving that result. It leaves the contractor free to choose the materials, methods and design necessary to accomplish the work and imposes on the contractor the responsibility to insure that the desired result is achieved.

7. A design specification is one in which the owner specifies the design, materials and methods to be used and impliedly warrants their sufficiency. It requires the contractor to follow the specifications without deviation and relieves the contractor from any responsibility for inadequacy of the design.

8. Some of the factors to be considered in determining whether specifications are of the performance or design variety are:

(a) The language of the contract as a whole.

(b) The nature and degree of the contractors' involvement in the specification process.

(c) The degree to which the contractor is allowed to exercise discretion in carrying out its performance.

9. In this case, the contract did not prescribe the method for performing the work.

10. The specifications did incorporate by reference the GEI reports that discuss the need for temporary haul roads at the excavation site as well as the confined cell and base layer placement methods.

11. However, bidders were told that the owners were relying on their expertise in determining how the work should be done, and it was left to the contractor to develop and submit plans for carrying out the work.

12. The significance of the reference to temporary haul roads and GEI's report was to alert bidders to the fact that such roads would be needed because the dredge spoil would not support construction traffic.

13. Although GEI stated that such roads should be constructed with a geosynthetic base covered with a minimum 1-2' of gravel, GEI did not specify the design of those roads.

14. The choice of geosynthetic material was left to the contractor, and Pezza selected Mirafi.

15. The depth of the gravel required depended on the nature of the equipment used by the contractor and, therefore, could be determined only by the contractor.

16. The contract left it to the contractor to determine the layout of the temporary haul roads and the sequence in which the material would be excavated.

17. The methods of placement described in the second GEI report were merely options considered practical by GEI at the time the report was prepared.

18. Pezza was not required to use either method.

19. Pezza had discretion to use alternative methods subject to the owner's approval.

20. The owners, based on input from the bidders, implicitly disavowed the base layer method when they eliminated the compaction requirement.

21. There is no evidence that the owners made any false representations or warranties regarding the nature or characteristics of the dredge spoil.

22. In the contract, the owners expressly disclaim any warranty with respect to subsurface conditions and require the bidders to fully acquaint themselves with those conditions.

23. The GEI reports make it clear that there may be variations in the conditions that would not become evident until actual excavation.

24. The GEI reports accurately described the dredge spoil as mostly organic silt having high plasticity.

25. The GEI reports also indicate the tendency of the dredge spoil to liquefy, especially when it was wet.

26. It was apparent from the information contained in the GEI reports that much of the dredge spoil would be wet because it was being excavated from below the water table level and would be exposed to rainwater runoff.

27. In determining the nature of the dredge spoil and a method for performing the work, Pezza did not rely on any alleged representations by the owners.

28. Pezza dug its own test holes and formed its own conclusions based on the results.

29. Pezza did not rely on the soil data provided by GEI because it did not understand the data and was unwilling to hire an engineer to interpret it.

30. Pezza determined for itself the best way to accomplish the work without regard to any information contained in the specifications except to the extent its methods would be contrary to the specifications.

31. Under the circumstances, it was unreasonable to construe GEI's references to placement options as representations by the owners with respect to the nature and characteristics of the dredge spoil.

32. Nor was it reasonable to selectively rely on those references without seeking to analyze or understand the soil data supplied by GEI.

33. The conditions encountered were not latent conditions that were materially different from those indicated in the contract or for which the Owners should be held responsible.

34. The parties were aware that the dredge spoil was very unstable, especially when wet, and would not support traffic by construction equipment.

35. It was understood that the owners were relying on the contractors' expertise in developing methods to accomplish the work.

36. The contract imposed on the contractors the responsibility to familiarize themselves with the conditions.

CONCLUSION

For all of the foregoing reasons, it is hereby ORDERED as follows:

1. Judgment shall enter in favor of C. Pezza & Son, Inc. in the amount of $ 169, 852.34 pursuant to the order dated September 27, 1994 granting Pezza's motion for summary judgment with respect to the retainage claim set forth in counts 7-9.

2. With respect to the remaining claims set forth in Counts 1-6, judgment shall enter in favor of New England Power Service Company and Montaup Electric Company dismissing such claims.

IT IS SO ORDERED,

_____
Ernest C. Torres
United States District Judge

Date: July , 1995